

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JESSICA LEE, individually and on behalf of a class of similarly situated individuals,

Case No. 3CV 11-0043-RS

Plaintiff,

v.

STONEBRIDGE LIFE INSURANCE COMPANY, a Vermont corporation, and TRIFECTA MARKETING GROUP LLC, a Florida limited liability company,

~~[PROPOSED]~~ ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND APPROVING NOTICE PLAN

Judge: Hon. Richard Seeborg

Defendants.

1 WHEREAS, a class action is pending before the Court entitled *Lee v. Stonebridge Life*
 2 *Insurance Co., et al.*, Case No. 11-cv-00043; and

3 WHEREAS, on February 12, 2013, the Court granted Plaintiff's Motion for Class
 4 Certification, certifying a Class pursuant to Fed. R. Civ. P 23(b)(3) of "All individuals that received
 5 a text message from telephone number '650-283-0793' from November 28, 2010 through December
 6 2, 2010;" and

7 WHEREAS, Plaintiff Jessica Lee ("Plaintiff"), Defendant Stonebridge Life Insurance
 8 Company ("Stonebridge"), and Defendant Trifecta Marketing Group, Inc., ("Trifecta") (Stonebridge
 9 and Trifecta are together "Defendants" and collectively with Plaintiff the "Parties") have entered
 10 into a Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms
 11 and conditions for a proposed settlement and dismissal of the Action with prejudice as to
 12 Defendants for the claims of the Class upon the terms and conditions set forth in the Settlement
 13 Agreement, and the Court having read and considered the Settlement Agreement and exhibits
 14 attached thereto;

15 This matter coming before the Court upon the agreement of the Parties, good cause being
 16 shown, and the Court being fully advised in the premises,

17 **IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:**

18 1. Terms and phrases in this Order shall have the same meaning as ascribed to them in
 19 the Parties' Class Action Settlement Agreement and Release (the "Settlement Agreement").

20 2. The Parties have moved the Court for an order approving the settlement of the
 21 Action in accordance with the Settlement Agreement, which, together with the documents
 22 incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of
 23 the Action with prejudice against Defendants, and the Court having read and considered the
 24 Settlement Agreement and having heard the Parties and being fully advised in the premises, hereby
 25 preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval
 26 Hearing referred to in Paragraph 15 of this Order.

27 3. This Court finds that it has jurisdiction over the subject matter of this action and over
 28 all Parties to the Action, including all members of the Class it certified on February 12, 2013.

1 4. The Court finds that, subject to the Final Approval Hearing, the Settlement
 2 Agreement is fair, reasonable, adequate, and in the best interests of the Class as to their claims
 3 against Defendants. The Court further finds that the Settlement Agreement substantially fulfills the
 4 purposes and objectives of the class action, and provides beneficial relief to the Class. The Court
 5 also finds that the Settlement Agreement (a) is the result of arms' length negotiations involving
 6 experienced counsel made with the assistance of the Honorable Rebecca Westerfield (ret.); (b) is
 7 sufficient to warrant notice of the settlement and the Final Approval Hearing to the Class; (c) meets
 8 all applicable requirements of law, including Federal Rule of Civil Procedure 23, and the Class
 9 Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; and (d) is not a finding or admission of liability
 10 by Defendants.

11 Notice and Administration

12 5. Pursuant to the Settlement Agreement, Kurtzman Carson Consultants LLC ("KCC"),
 13 is hereby appointed as Settlement Administrator and shall be required to perform all the duties of
 14 the Settlement Administrator as set forth in the Agreement and this Order.

15 6. On May 22, 2013, the Court approved, with minor modifications, a similar plan to
 16 notify the class of the certification of this Action (Dkt. 110.) The Court finds that the Notice Plan
 17 and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits A, B, and
 18 C thereto, is also approved as the Notice Plan's amended form, method, and content, complies with
 19 the requirements of Rule 23 and due process, and constitutes the best notice practicable under the
 20 circumstances. The Court further finds that the Notice is reasonably calculated to, under all
 21 circumstances, apprise the members of the Class of the pendency of this action, the certification of
 22 the Class, the terms of the Settlement Agreement, and the right of members to object to the
 23 settlement or to exclude themselves from the Class. The Parties, by agreement, may revise the
 24 Notice in ways that are not material, or in ways that are appropriate to update those documents for
 25 purposes of accuracy or formatting.

26 7. Pursuant to paragraph 4.1 of the Settlement Agreement, the Notice Plan shall be
 27 implemented as follows: The Settlement Administrator shall within fourteen (14) days following the
 28 entry of this Order post notice of this settlement on the settlement website at

1 www.LeeTextMsgCase.net. Within thirty-five (35) days following the entry of this Order, the
 2 Settlement Administrator or Stonebridge (with the assistance of the Settlement Administrator) shall
 3 provide direct notice with an accompanying Claim Form by email and U.S. Mail, in accordance
 4 with the Notice Plan. Additionally, the Settlement Administrator or Stonebridge shall, within thirty-
 5 five (35) days of the entry of this Order, distribute a press release that summarizes this proposed
 6 Settlement. Defendants have complied with the requirements of 28 U.S.C. § 1715 by serving notice
 7 of the proposed Settlement upon the appropriate government officials within ten (10) days of the
 8 Settlement Agreement being filed with the Court.

9 8. Members of the Class who wish to receive a payment under the Settlement
 10 Agreement must complete and submit a valid Claim Form. All Claim Forms must be postmarked or
 11 received by the Settlement Administrator within thirty (30) days after the date of the Final Approval
 12 Hearing.

13 Exclusion

14 9. Class Members who wish to exclude themselves from the Class for purposes of this
 15 Settlement may do so by complying with the exclusion procedures set forth below. Any member of
 16 the Class who timely requests exclusion consistent with those procedures shall not be bound by the
 17 terms of the Settlement Agreement.

18 10. To request exclusion, the Class Member must complete, sign, and mail to the
 19 Settlement Administrator a request for exclusion, on or before June 19, 2014 (the
 20 “Objection/Exclusion Deadline”). The request for exclusion must comply with the exclusion
 21 procedures set forth in the Settlement Agreement and Notice and include the member’s name and
 22 address, the cellular phone number that received the text message from 650-283-0793, a signature,
 23 the name and number of the case, and a statement that he/she wishes to be excluded from the Class
 24 for purposes of this Settlement. A request for exclusion must be personally signed by the member
 25 of the Class requesting exclusion and may not request exclusion of more than one member of the
 26 Class.

27 11. Class Members who opt out of the Settlement Agreement shall not (i) be bound by
 28 the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by

1 virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. However,
 2 Class Members who fail to submit a valid and timely request for exclusion shall be bound by all
 3 terms of the Settlement Agreement and the Final Judgment, regardless of whether they have
 4 requested exclusion from the Settlement Agreement.

5 Objections

6 12. Any Class Member who has not timely filed a request for exclusion may object to
 7 the fairness, reasonableness, or adequacy of the Settlement Agreement, to Final Judgment being
 8 entered and dismissing the Action with prejudice as to Defendants in accordance with the terms of
 9 the Settlement Agreement, to the attorneys' fees and expense reimbursement sought by Class
 10 Counsel, or to the award sought by the Class Representative as set forth in the Notice and
 11 Settlement Agreement. At least fourteen (14) days prior to the Objection/Exclusion Deadline,
 12 papers supporting the Fee Award shall be filed with the court and posted to the settlement website.
 13 Class Members may object on their own, or may do so through separate counsel at their own
 14 expense.

15 13. To object, a Class member must sign and file a written objection no later than
 16 June 19, 2014. To be valid, the objection must include the member's name and address, include all
 17 arguments, citations, and evidence supporting the objection (including copies of any documents
 18 relied on), state that he or she is a Class Member, provide the cellular phone number that received
 19 the text message from 650-283-0793 and provide a statement indicating whether the objector
 20 intends to appear at the Final Approval Hearing with or without counsel. Any objection made by a
 21 Class Member represented by counsel must be filed through the Court's CM/ECF system. Class
 22 members who fail to file and serve timely written objections in compliance with the requirements of
 23 this paragraph and the Settlement Agreement shall be deemed to have waived any objections and
 24 shall be foreclosed from making any objections (whether by appeal or otherwise) to the Agreement.

25 14. To be valid, objections must be filed with the Court and delivered to Class Counsel
 26 Ryan D. Andrews of Edelson PC, 350 North LaSalle, Suite 1300, Chicago, IL 60654, Stonebridge's
 27 Counsel Tiffany Cheung, Morrison & Foerster LLP, 425 Market Street, San Francisco, California,

1 94105-2482, and Trifecta's Counsel Alexander E. Sklavos, Law Offices of Alexander E. Sklavos,
 2 P.C., 375 North Broadway, Suite 208, Jericho, New York 11753 by June 19, 2014.

3 Fairness Hearing

4 15. The Fairness Hearing shall be held before this Court on July 24, 2014 at 1:30 P.M. in
 5 in Courtroom 3 on the 17th Floor of the Phillip Burton Federal Building & United States
 6 Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102 to consider: (a) whether the
 7 proposed settlement of the Action on the terms and conditions provided for in the Settlement
 8 Agreement is fair, reasonable and adequate and should be given final approval by the Court;
 9 (b) whether the Final Judgment should be entered; (c) whether to award payment of attorneys' fees
 10 and expenses to Class Counsel; and (d) whether to award payment of an incentive award to the
 11 Class Representative. The Court may adjourn the Fairness Hearing without further notice to Class
 12 Members.

13 16. Papers in support of final approval of the Settlement Agreement shall be filed with
 14 the Court on or before July 10, 2014.

15 Further Matters

16 17. In order to protect its jurisdiction to consider the fairness of this Settlement
 17 Agreement and to enter a Final Order and Judgment having binding effect on all Class Members,
 18 the Court hereby enjoins all Class Members, and anyone who acts or purports to act on their behalf,
 19 from pursuing all other proceedings in any state or federal court that seeks to address any Released
 20 Party's or Class Member's rights or claims relating to, or arising out of, any of the Released Claims.

21 18. Class Members shall be bound by all determinations and judgments in the Action
 22 concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

23 19. In the event that the Settlement Agreement is terminated pursuant to the provisions
 24 of the Settlement Agreement, then (i) the Settlement Agreement shall be null and void, and shall
 25 have no further force and effect with respect to any Party in this Action, and shall not be used in this
 26 Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, and statements
 27 made in connection therewith shall be without prejudice to any person or Party hereto, shall not be
 28 deemed or construed to be an admission by any Party of any act, matter, or proposition, and shall

1 not be used in any manner or for any purpose in any subsequent proceeding in this Action or in any
2 other action in any court or other proceeding, provided, however, that the termination of the
3 Settlement Agreement shall not shield from subsequent discovery any factual information provided
4 in connection with the negotiation of this Settlement Agreement that would ordinarily be
5 discoverable but for the attempted settlement; and (iii) other than as expressly preserved by the
6 Settlement Agreement in the event of its termination, the Settlement Agreement shall have no
7 further force and effect with respect to any Party and shall not be used in the Action or any other
8 proceeding for any purpose.

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IT IS SO ORDERED.

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DATED: April 4, 2014

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THE HONORABLE RICHARD SEEBORG

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UNITED STATES DISTRICT COURT JUDGE

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